

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CARLETHA KAY BROOME**

Claimant

VS.

**GILL STUDIOS, INC.**

Respondent

Self-Insured

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Docket No. 220,584

**ORDER**

Respondent appealed the December 22, 1997, Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

The Administrative Law Judge granted claimant's request for medical treatment for an injured left shoulder. Claimant slipped and fell on the ice on respondent's parking lot on December 23, 1996. As a result of that fall, the respondent agrees that claimant suffered a compensable right knee injury. However, claimant also alleges that the fall caused her to have a left shoulder injury. Respondent contends that claimant's left shoulder injury did not occur during the December 23, 1996, fall but occurred in a separate nonwork-related incident on February 23, 1997. Therefore, the single issue before the Appeals Board for review is whether claimant's left shoulder injury arose out of and in the course of her employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant fell on the ice in respondent's parking lot after she exited her boyfriend's car and was walking around the car in order to kiss the boyfriend goodbye. Claimant's

boyfriend had driven claimant to work on December 23, 1996, the morning of the accident. Respondent voluntarily provided claimant with medical treatment for a right knee injury.

Claimant was treated primarily by orthopedic surgeon, Burrell C. Gaddy, Jr., M.D. Dr. Gaddy first saw claimant on January 3, 1997, for her right knee injury and diagnosed a chronic anterior cruciate ligament tear and meniscal changes but no tear. After a regimen of conservative treatment, Dr. Gaddy, on March 3, 1997, performed a right knee anterior cruciate ligament reconstruction and medial/lateral partial meniscectomies. He released claimant without restrictions on August 21, 1997.

Dr. Gaddy's medical records include a medical history filled out by the claimant on January 3, 1997. Under the chief complaint category, the claimant indicated right knee pops out of place, some pain in left leg, hip, shoulder, and back from the fall. However, Dr. Gaddy's medical treatment notes do not mention left shoulder complaints until claimant's last visit on August 21, 1997. During that visit, claimant complained about problems with her shoulder and also asked Dr. Gaddy about treatment for her shoulder. Claimant indicated to Dr. Gaddy that she had made complaints about her shoulder during her initial visit. Dr. Gaddy noted there was nothing contained in his initial medical record concerning claimant's left shoulder.

Claimant testified, in addition to injuring her right knee in the fall on December 23, 1996, she also had injured her left shoulder. Claimant testified she complained to the physical therapist of pain and discomfort in her left shoulder two days following the accident. However, a review of the physical therapy records does not indicate that claimant made any complaints in reference to her left shoulder.

Other than the history claimant gave to Dr. Gaddy during her first visit, the first left shoulder complaints that surface in the medical records, is claimant's visit to the emergency department at Research Medical Center on February 23, 1997. Claimant testified she felt pain and discomfort in her left shoulder as she reached to brush her boyfriend's hair while they were driving in his car on February 23, 1997. Claimant thought she had dislocated her shoulder at that time. The emergency medical record indicates claimant had no prior history of dislocation of her shoulder and no direct trauma.

Claimant was then seen on February 27, 1997, by orthopedic surgeon, Neal D. Lintecum, M.D. Claimant gave a history to Dr. Lintecum that a month before this incident she had fallen and landed on her left shoulder. The doctor's impression was possible left shoulder dislocation and claimant was referred to physical therapy. In a letter dated July 1, 1997, in response to an inquiry by claimant's attorney, Dr. Lintecum did not relate claimant's February 1997 injury to her earlier work-related fall.

At claimant's attorney's request, claimant was examined and evaluated by Vito J. Carabetta, M.D., a board-certified physical medicine rehabilitation physician. In a report dated August 21, 1997, Dr. Carabetta diagnosed claimant with limited biceps tendinitis of

the left shoulder. He opined that claimant's prior episodes with the left shoulder had not been dislocations. The doctor recommended treatment in the form of limited physical therapy modalities as well as use of anti-inflammatory medications. Dr. Carabetta could not express an opinion on whether there was a causal relationship between claimant's left shoulder injury and her work-related fall.

The Administrative Law Judge found claimant's left shoulder injury and need for medical treatment related to the December 23, 1996, fall at work. He found the fall, as described by the claimant, made it more likely for claimant to have suffered a shoulder injury than even her knee injury.

The Appeals Board finds the preliminary hearing record taken as a whole convinces the Appeals Board that the claimant's present left shoulder condition and need for medical treatment is not the result of her December 23, 1996, work-related fall. The Appeals Board concludes the medical records and reports admitted into evidence prove the more plausible explanation for claimant's left shoulder problem is an injury that she received on February 23, 1997, when she reached to brush her boyfriend's hair while they were driving in his car. The evidence supports the finding that claimant suffered a new and separate left shoulder injury during this incident and her current left shoulder problems are not the result of the work-related fall. See Wietharn v. Safeway Stores, Inc., 16 Kan. App. 2d 188, Syl. ¶ 6, 820 P.2d 719 (1991).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision dated December 22, 1997, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, reversed and claimant is denied her request for medical treatment for the left shoulder injury.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1998.

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BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS  
H. Wayne Powers, Overland Park, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director